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ARIZONA ATTORNEY GENERAL

August 3, 1984

The Honorable Jones Osborn
Arizona State Senator
State Capitol - Senate Wing
Phoenix, AZ 85007

Re: I84-110 (R84-131)

Dear Senator Osborn:

In your letter of July 20, 1984, you requested our opinion whether the provisions of A.R.S. §11-251(9) requiring the appointment of an appraiser and the establishment of a minimum price not less than 90% of the appraised value apply to the newly added provision to that statute which allows the sale or lease of county property to governmental entities or non-profit organizations without the need for a public auction.

For the reasons set forth below, it is our opinion that the appraisal and minimum price requirements do apply to the sale of real property to government entities and non-profit organizations. Leasing of county property, however, is governed by the provisions set forth in A.R.S. §§ 11-256 et seq.

A.R.S. § 11-251(9) provides:

...Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging

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to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this state.

(Underlined part amended in 1984.)

The language of the statute itself indicates, without qualification, that real property shall be appraised to establish a minimum price prior to sale by the county. Although the Legislature in 1984 removed the public auction requirement for real property sales and leases to governmental entities and

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non-profit organizations, it did not amend the appraisal/minimum price requirement. Therefore, the plain language of A.R.S. § 11-251(9) requires that appraisal and minimum price be required in non-public auction sales to governmental and non-profit entities.¹

Sincerely,



BOB CORBIN
Attorney General

BC:mch

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1. We also note in passing that sales and leases to non-profit organizations at less than fair market value would violate Article IX, Section 7, of the Arizona Constitution proscribing gifts to an individual or association.